

## **STURBRIDGE ZONING BOARD OF APPEALS**

### **MINUTES OF**

Wednesday, June 22, 2005

**Present:** Mary Blanchard  
Theophile Beaudry  
Marge Cooney  
Robert Cornoni  
Pat Jeffries  
Ginger Peabody, Chairman  
Bruce Sutter

**Also in Attendance** Lawrence Adams, Town Planner  
Nancy Campbell, Clerk

G. Peabody opened the meeting at 7:00 PM and read the agenda. The minutes of May 25, 2005 were reviewed.

**Motion:** to approve the minutes of May 25, 2005, as amended, by M. Cooney  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** None  
**Vote:** In favor – B. Sutter, M. Cooney, G. Peabody, P. Jeffries, R. Cornoni and T. Beaudry  
Abstain – M. Blanchard

The minutes of June 8, 2005 were reviewed.

**Motion:** to approve the minutes of June 8, 2005, as presented, by M. Cooney  
**2<sup>nd</sup>:** P. Jeffries  
**Discussion:** M. Blanchard asked to be included on the vote for pages 6 to 8 for these minutes. G. Peabody agreed to include M. Blanchard's vote as requested.  
**Vote:** Pages 1 – 5: In favor – B. Sutter, M. Cooney, G. Peabody, P. Jeffries, R. Cornoni and T. Beaudry  
Abstain – M. Blanchard  
Pages 6 – 8; All in favor

## **CORRESPONDENCE**

Kopelman & Paige – dated 06-21-05 – RE: RRI, Inc. v. Planning Board; RRI, Inc. v. Zoning Board of Appeals  
CME Associates, Inc. – dated 05-31-05 – RE: Invoice #0007262 for Professional engineering services – Stoneleigh Woods – May 1, 2005 to May 31, 2005;  
Judith Nitsch Engineering, Inc. – dated 05-28-05 – RE: Invoice #0019457 for Professional engineering services – The Estates at Sturbridge Farms – May 1, 2005 to May 28, 2005;

M. Blanchard recused herself and stepped off the board at 7:05 PM.

**PUBLIC HEARING CONTINUATION – 02-09-05-1SP – THE SPAHO CORPORATION – TO ALLOW AN ACCESS DRIVEWAY OFF OF MAIN STREET (ROUTE 131) WHICH IS NOT THE LOT'S LEGAL FRONTAGE AND TO PERMIT THE CONSTRUCTION OF TWENTY-ONE AGE RESTRICTED CONDOMINIUM UNITS LOCATED AT 30 FARQUHAR ROAD**

Attorney Robert George, on behalf of The Spaho Corporation, stated that the applicant would be appealing the Board's June 8, 2005 decision which denied both variance petitions for The Estates at Sturbridge Farms to preserve his rights under the process. A letter dated 06-22-05 requesting a continuation of this public hearing for the special permit to September 21, 2005 was submitted by Attorney George. G. Peabody read the letter and added that the Board of Selectmen (BOS) were giving consideration to revoking its approval for the water and sewer permit due to the substantial changes to the plans. Attorney George stated that since the special permit was contingent on the requested variance petitions, the continuation would provide time to correct the misunderstanding that had developed at the last public hearing session. The Board requested that an extension of the deadline date for final decision by the Board on the special permit be included in the letter requesting the public hearing continuation to September 21, 2005... He agreed and did so.

**Motion:** to continue the public hearing for The Spaho Corporation special permit to September 21, 2005 for final decision so as to avoid constructive approval, by M. Cooney

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** All in favor

Attorney George submitted a letter dated 06-22-05 which requested that the Board reconsider its vote of the June 8<sup>th</sup> meeting which denied the two variance petitions based on new information brought forth. G. Peabody read the letter and responded by reviewing L. Adams' memorandum regarding "Reconsideration of Denial of Variance" which clarified this issue relative to the state zoning regulations and discussion with Town Counsel. He found that: 1) since the decision had been filed with the Town Clerk, the vote was irreversible – The Zoning Act, Chapter 40A, Section 9, 10 and 11; should the petitioner decide to file for reconsideration both must occur (a) the Zoning Board of Appeals (ZBA) must vote affirmatively by super majority for reconsideration and (b) the Planning Board must vote affirmatively by all but one member – The Zoning Act, Chapter 40A, Section 16; and 3) the applicant could appeal the decision to Superior Court.

G. Peabody felt the Board should be the first to take up the issue and asked if it wished to reconsider its vote of June 8<sup>th</sup> due to new information. L. Adams suggested that the Board would want to know what new information was available. Attorney George stated he would be refuting all the new information brought to the Board by showing that that information presented by David Barnicle, Conservation Commission Chairman, was erroneous. He felt the process was unfair and added that this information was presented after the close of the public hearing; that five people were allowed to speak, though not all against; that the applicant was not allowed to speak; that the Board rejected the application and did so based on the information received at that June 8<sup>th</sup> meeting. Attorney George offered to explain his reasons for the request. B. Sutter commented that there had been confusion throughout the presentation of this project. He asked that a written case, as to why the Board should reconsider its variance decisions, be put together and submitted to the Board for its review before he would consider voting the issue.

L. Adams offered that there were two issues before the Board: 1) to reconsider and 2) the reconsideration itself which should be an entirely new variance application. He supported B. Sutter's request in that the applicant should submit its case in writing to the Board that there had been erroneous statements made without an opportunity for the applicant to refute them. The case must also be submitted to the Planning Board. Both boards must decide if there were erroneous elements and then vote, as referenced in The Zoning Act, as to whether or not there was an issue of unfairness. R. Cornoni suggested an outline of reasons be submitted to the Board. L. Adams noted the reconsideration process was not conducted under a public hearing process. M. Cooney stated that she made it clear on May 25<sup>th</sup> that she did not believe the Board should base its decision on the Conservation Commission's findings. At that time, she had voiced her opinions why she could not support the variance petition. M. Cooney commented that she had previously cited numerous inconsistencies on the

special permit application submittal and at that time had suggested that the applicant might consider withdrawing without prejudice.

Attorney George stated that in response to B. Sutter's and R. Cornoni's issues, written reasons for the request for reconsideration would be submitted to the Board by June 29<sup>th</sup>. He asked the Board to postpone its consideration to the June 29<sup>th</sup> meeting. G. Peabody noted that the Board must have the outline before June 29<sup>th</sup> in order to have time to review the material.

- Carol Goodwin – concerned that the public would be left out of this process. G. Peabody stated it was a decision of the Board, that the public had no standing on the matter of reconsideration.

Attorney George submitted a letter dated 06-22-05 requesting a copy of the "Dumas" email referred to at the June 6, (8<sup>th</sup>) 2005 meeting. G. Peabody authorized the release of this email.

M. Blanchard stepped back onto the Board at 7:30 PM

#### **REQUEST FOR DETERMINATION – 06-22-05-1D – MISIASZEK, JOSEPH & WILLIAM, 4 CORMACK ROAD**

Joseph Misiaszek presented the request for determination for property located at 4 Cormack Road. This request was to permit the construction of a five foot by eight foot laundry room under an existing roof. The lot was nonconforming in that it lacked sufficient area and frontage and the structure was nonconforming in that it encroached into the street setback. M. Blanchard noted that the numbers on the application did not coincide with the numbers on the boundary survey and asked that the applicant correct them and come back to the Board. The Board agreed to waive the fee and hear the request at its June 29<sup>th</sup> meeting.

#### **NEW BUSINESS**

**Motion:** to pay Judith Nitsch Engineering, Inc.'s Invoice # 0019457 for professional services in the amount of \$3,720.00 from The Estates at Sturbridge Farms Outside Consultant Fees Account, by P. Jeffries  
**2<sup>nd</sup>:** M. Cooney  
**Vote:** In favor – B. Sutter, M. Cooney, G. Peabody, P. Jeffries, R. Cornoni and T. Beaudry  
Abstain – M. Blanchard

**Motion:** to pay CME Associates, Inc.'s Invoice # 0007262 for professional services in the amount of \$5,733.25 from the Stoneleigh Woods Outside Consultant Fees Account, by M. Blanchard  
**2<sup>nd</sup>:** M. Cooney  
**Vote:** All in favor

#### **OLD BUSINESS**

SPL Development Group, Crescent Gate of Sturbridge – Water and Sewer Fees – M. Blanchard asked to have the problem submitted in writing explaining the amount in question. G. Peabody said that the issue involved the sewer permit fee in the amount of approximately \$80,000.00. Charles Blanchard, former Selectman, offered that the BOS looked at the project with regard to sewer privilege fees only. He noted the connection fee was \$1,200 for each unit (69 units at \$1,200 - \$82,800.) G. Peabody recalled that when she and M. Blanchard went before the BOS there was no mention of a sewer permit fees. Both C. and M. Blanchard understood that the villa building would be accessed for only one connection fee tie in. C. Blanchard suggested there would be

a tie in for the other units. M. Blanchard recalled that the Board only addressed the sewer privilege fee and G. Peabody pointed out that that was because the Board had not been made aware of the permit fee in any correspondence from the BOS. N. Campbell provided the Board with documents from the project file reviewing correspondence between Steven Paquette, of SPL Development Group, and James Malloy. R. Cornoni mentioned that S. Paquette had submitted a financial statement with all the fees for the project. If this fee was not on the detailed statement, he felt this was an issue because if the Board had seen the fee it would have reacted to it. The Board discussed the options available in this situation given that those involved had acted in good faith.

Summer meeting schedules - June 29<sup>th</sup>

July 13<sup>th</sup> – The Board agreed to “waive” this meeting

July 27<sup>th</sup> – tentative date

Blue & Gold Development Workshop – Stoneleigh Woods – P. Jeffries and G. Peabody gave a summary of the June 20<sup>th</sup> workshop as follows:

- The Board met with – OFS Fitel representatives, Bob Roach and Bud Mastalerz: the Fire Chief; and the DPW Director.
- Issues – emergency vehicle turnarounds; OFS Fitel sewer capacity concern for Hall Road pump station at 60,000 gallons – had looked to BOS for an additional 42,000 gallons, but BOS minutes reflect this had not been granted; OFS Fitel drainage concerns from the proposed project onto their property after buildout; concerns regarding water pressure for the project and potential solutions – bonding or reduction in units.
- Site Walk at OFS Fitel – Representatives from Waterman Design, CME, and OFS Fitel will be meeting on Friday, June 24<sup>th</sup> for a site walk to look at the drainage issues – members are invited.
- Access Driveway – could not be moved due to wetlands and property lines restrictions – had the options of 1) to buy land from abutting Sturbridge Meadows been looked into or 2) reconfiguring the parking lot across Hall Road.
- Legal Frontage – G. Peabody stated the legal frontage for the project was still a major issue that had not been resolved. Town Counsel was now involved and would be forwarding its opinion to the Board.

C. Blanchard commented that when the project was brought to the BOS by Blue & Gold Development for the sewer extension permit, the BOS was clear that if an upgrade to the pump station was necessary, it would be done by the applicant. He added that the applicant had agreed. The pump station was part of the Town’s Phase II sewer project and its location had been allowed by Spectran (previous business) and OFS Fitel’s request for the additional 42,000 gallons of sewer capacity did not have precedence over any other applicant. He stated that at a recent BOS work session unique dedications to reserve sewer usage was discussed and if the BOS was willing to set aside such a reserve they felt a fee should be charged. Due to the moratorium on sewerage, he did not believe the 42,000 gallons would be approved. G. Peabody asked what happened if the Blue & Gold Development project was to exceed the permitted 11,000 gallons. C. Blanchard stated the numbers had been reviewed; felt the numbers were reasonable and that this would not happen. M. Cooney was concerned that given the units’ size at 2,400 square feet and individuals aged 55 there might use more usage than the 150 gallons/day. C. Blanchard noted that the average flow of a four bedroom house was found to be under 200 gallons/day.

**Motion:** to adjourn, by M. Blanchard

**2<sup>nd</sup>:** P. Jeffries

**Discussion:** None

**Vote:** All in favor

**Adjournment at 8:00 PM**